* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CONT.CAS(C) 445/2004 Reported

Reserved on: 9th July, 2007.

Date of decision: 26th July, 2007

NEERAJA MEHRA ..... Petitioner

Through Petitioner in person

versus

RAKESH MEHTA & ANR. ..... Respondent

Through Mr. Anil Grover, Advocate for the contemnor.

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat:

Order on Sentence:

1. By judgment and order dated 25th May, 2007, I had convicted the respondent Sh. M.M. Dhayia for having committed contempt of this court on the finding that his conduct amounted to wilful and deliberate dis-obedience of Court's order. The matter was adjourned for hearing the contemner on the point of sentence. The petitioner as well as the contemner's counsel were heard on 9th July, 2007.

2. The contemner filed an affidavit on 6.7.2007 tendering his unqualified and sincere apology to the Court. He deposed about his blemishless 20 years record of service in the

MCD and also alluded to repeated outstanding ratings given by his superior authorities. He further deposed that on 7.4.2006, MCD dispensed with his services along with those of 17 other Executive Engineers without following any departmental proceedings.

3. Learned counsel appearing on behalf of the contemner submitted that the apology tendered to the Court is unconditional and worthy of acceptance. It was submitted that the contemner's transgressions were not of such a magnitude as to impel this Court to punish him a prison term, or impose fine. Learned counsel adverted to proviso to Section 12(1) of the Contempt of Courts Act, 1971. That provision enables the Court to discharge an accused or remit the punishment awarded on apology being made to the satisfaction of the Court. Counsel also relied on the explanation to Section 12(1) and submitted that such apologies need not be rejected even if they are conditional. It was submitted that in view of the unconditional apology and the repentance shown by the contemner the Court should adopt a lenient view. Reliance was placed upon the judgment reported as *Chandan Mitra And Anr. in re: (Suo Motu Contempt Petition)* 1998 (8) SCC 554 and *State of Haryana Vs. Nauratta Singh And Ors.* 2000(3) SCC 513.

4. The petitioner who argued the case herself opposed the request for complete remission and submitted that finding of the Court clearly disclosed wilful and contumacious conduct. It was submitted that the contemner was fully aware of the consequences of his actions and inactions and being a senior officer fully aware of his responsibility failed in the discharge of his duties. He also withheld material facts from the Court which defeated the Court's directions. It was contended that in such

circumstances, the Court should not hesitate to impose an appropriate sentence. As to what the sentence would, was best left to the discretion of the Court.

5. This court had convicted the contemner for wilfully withholding materials and indulging in conduct that defeated previous directions. The question is what should be the appropriate order on the point of sentence.

6. The proviso of Section 12 empowers the Court to remit the sentence or discharge the accused if an apology is made by him to its satisfaction. In this case, the conduct of the contemner in virtually subverting the Court's orders has been documented by the judgment convicting him.

7. In *E.T. Sunup -vs-C.A.N.S.S. Employees Association and Anr.* 2004 (8) SCC683, the Supreme Court, even while not sentencing a public official for contempt, and imposing fine, held as follows:

> *"It has become a tendency with the Government Officers to somehow or the other circumvent the orders of Court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the court's order cannot be countenanced. This Court time and again has emphasized that in democracy the role of the Court cannot be subservient to the administrative fait. The executive & legislature has to work within Constitutional frame work, and the judiciary has been given a role of watch dog to keep the legislature & executive within check."*

In *T.N. Godavarman Thirumulpad through the Amicus Curiae-vs-Ashok Khot and Anr.*

(2006) 5SCC 1, the Supreme Court emphasized the importance of exercising contempt jurisdiction appropriately to secure compliance with orders of court, in the following

terms:

> *"19. Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the Court, as a matter of law to make a finding of contempt against any official of the Government say Home Secretary or a Minister. While contempt proceedings usually have these characteristics and contempt proceedings against a Government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequest the assets of the Crown or a Government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a Government department or minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be Page 2533 made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to ensure the orders of the court are obeyed. This jurisdiction is required to be co-extensive with the courts' jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorized Government departments or the Attorney General. On applications for judicial review orders can be made against ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (See M v. Home Office (1993) (3) All ER 537."*

8. These proceedings have dragged on for over two years; they have spanned innumerable Court hearings. Although the right of litigant or any person accused of contempt to contest the charges, cannot be disputed, a singular factor which is of importance is that the contemner is a senior public official of the MCD. If he had, at the first instance, appeared before the Court and admitted to the facts which have resulted in

adverse findings against him, considerable hearing time would have been saved.

8. On an overall conspectus facts and attendant circumstances, I am of the opinion that the contemner appears to be genuinely repentant of his conduct. This is a fit case where sentence is not called for, because

> *"The quality of mercy is not strain'd.*
> *It droppeth as the gentle rain from heaven*
> *Upon the place beneath.*
> *It is twice blest:*
> *It blesseth him that gives and him that takes."*
>
> --From *Merchant of Venice* (IV, I, (184-186)

In the circumstances of the case even while accepting the apology, the contemnor is directed to bear the costs of these proceedings quantified at Rs. 40,000/-. The same shall be paid to the petitioner within two weeks. Ordered accordingly.

(S. RAVINDRA BHAT)
JUDGE

JULY 26, 2007